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FILED
MAR 26 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

7
8 **UNITED STATES FEDERAL COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 TERRIE KENT,

11 Plaintiff,

12 vs.

13 CONTRA COSTA COUNTY,
14 DEPARTMENT OF HEALTH SERVICES,
DEBORAH TYLER, WILLIAM WALKER,
15 M.D., in his official capacity, and DOES 1
through 25, inclusive,

16 Defendant.
17

Case No. CV-08-0984 EDL

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATION OF CIVIL
RIGHTS, DAMAGES, ATTORNEY'S
FEES, AND OTHER APPROPRIATE
RELIEF TORTUOUS CONSTRUCTIVE
TERMINATION OF EMPLOYMENT IN
VIOLATION OF PUBLIC POLICY,
BREACH OF EMPLOYMENT
AGREEMENT AND OF GOOD FAITH
AND FAIR DEALING**

JURY TRIAL DEMANDED

18
19 **NATURE OF THE ACTION**

20 This is an action in contract and tort arising out of Defendant's constructive termination
21 of Plaintiff, breach of an employment contract, and for violation of Plaintiff's civil rights. Not
22 only did Defendant breach the employment contract and the implied covenant of good faith
23 implicit in the contract, Defendant also engaged in unfair business practices and violation of the
24 California's Prohibition of Discrimination, thus causing Plaintiff to incur loss of wages, special
25 and general damages, and attorney's fees. As alleged with greater particularity in the paragraphs
26 below, Plaintiff alleges that she has been significantly harmed by Defendant's conduct and seeks
27 both contractual damages, statutory damages, attorney's fees, as well as for general tort damages
28 against Defendant, including punitive damages.

JURISDICTION AND VENUE

The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1343, this being a suit in equity to redress the deprivation of civil rights guaranteed and secured by an Act of Congress, namely Title VIII of the Civil Rights Act, 42 U.S.C. §§ 1983 and 3601, *et seq.*, ("Title VIII") which is an Act of Congress providing for the protection of Civil Rights. Jurisdiction is also invoked pursuant to 42 U.S.C. §3612 which specifically confers jurisdiction in this court for actions brought under Title VIII. This court's jurisdiction to hear pendent state claims is also invoked. Venue is proper in this court because the alleged wrong doing occurred in Contra Costa County, California, within the Northern District of California.

THE PARTIES

1. Plaintiff TERRIE LYNN KENT (hereinafter "Plaintiff"), is an African-American woman, and is now, and at all times relevant herein been, an employee of Contra Costa County in its Department of Health Services, Mental Health (hereinafter "Department of Health Services") as a Deputy Public Guardian/Conservator

2. Defendant Contra Costa County (hereinafter "CCC"), and Department of Health Services, are government agencies, and are named in this lawsuit in its official capacity.

3. Plaintiff is informed and believes that at all relevant times, each DOE defendant was at all times acting in the course and scope of her employment with DEFENDANT

4. Plaintiff is informed and believes and hereon alleges that each of Defendants were managerial employees and agents of CCC and were, at all relevant times, acting in the course and scope of their employment with CCC. Consequently, Plaintiff is informed and believes that they are legally responsible for the acts herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by such Defendants.

FACTS COMMON TO ALL CAUSES OF ACTION

5. Plaintiff incorporates by reference and realleges the allegations set forth in Paragraphs 1 through 4 as though fully set forth herein

6. Plaintiff has been working for CCC for approximately twenty years and is currently employed as a Public Guardian/Conservator. For the past 11 years. Prior to this, she

1 worked at CCC as a Mental Health Case Manager in Richmond, and worked continuously
2 thereafter remained in the employment of CCC, and her employment is in the process of being
3 wrongfully constructively terminated by CCC.

4 7. At all times mentioned herein, Defendant CCC was a government entity branch
5 pursuant to the California Government Code, and Plaintiff was entitled to the rights and
6 protections of the Constitution of the United States of America, of the Constitution of the State
7 of California, and by state and federal laws which provide protection against discrimination on
8 the basis of gender, age, and race.

9 8. In 2007, Plaintiff was eligible for, and with DEFENDANT'S knowledge and
10 consent, took a leave of absence from work for personal health reasons created by a hostile work
11 environment at her workplace Conservatorship, Guardianship program at CCC, in which Plaintiff
12 was verbally threatened, yelled at, mistreated, and harassed by a co-worker, a Caucasian woman
13 who is also employed by CCC. Plaintiff has not been released by her doctor to return to her
14 workplace since her workplace remains unsafe. However, DEFENDANT failed to provide her
15 with a hostile-free work environment. Plaintiff's leave from work for a serious health condition
16 was authorized by CCC, pursuant to the California Family Rights Act (hereinafter "CFRA")

17 9. Plaintiff has filed an Administrative Claim with EEOC and received a Right
18 to Sue letter, a copy of which is attached hereto as Exhibit "A" and incorporated herein by
19 reference. In or about January 2008, Plaintiff filed a Governmental Claim with the County of
20 Contra Costa Board of Supervisors, which Plaintiff believes will be denied. A copy of said
21 Claim is attached hereto as Exhibit "B" and incorporated herein by reference.

22 10. CCC's policies and practices provided that when an employee returns from an
23 approved leave, that she will be reinstated to her former position. CCC had a practice and policy
24 of reinstating employees to his/her former position or its equivalent, when an employee returned
25 from an approved leave.

26 11. Plaintiff notified CCC in 2007 that Plaintiff was prepared to return to work,
27 however, Defendant was unwilling or unable to provide Plaintiff with a work environment free of
28 harassment and intimidation by Plaintiff's co-worker. Since Plaintiff could not return to a

1 hostile work environment, she will be constructively terminated if she does not report back to
 2 work in March. When Plaintiff insisted that she be either reinstated to her former position in a
 3 hostility-free environment, CCC informed Plaintiff that unless she returned to work, her
 4 employment would be terminated. As a proximate result of CCC's action, Plaintiff has suffered,
 5 and will continue to suffer, lost income and benefits, suffered general and special damages, and
 6 incurred attorneys fees according to proof.

7 **DISCRIMINATORY PRACTICE**

8 12. Defendants CCC and Public Employee's Union Local One were informed by
 9 Plaintiff that Defendant Deborah Tyler treated Plaintiff in an extremely hostile manner, and that
 10 Plaintiff felt physically threatened by Tyler, and that she needed to take a medical leave of
 11 absence due to that hostility, and that she needed to have a non-hostile work environment.

12 13. CCC failed and refused to provide Plaintiff with a non-hostile work environment
 13 and allowed said hostile work environment to continue. Plaintiff is the only African American
 14 woman that works in the capacity of Defendant in her office, and neither the woman who
 15 mistreated Plaintiff nor her supervisors are African American.

16 **INJUNCTIVE RELIEF**

17 14. Defendants' failure to properly supervise, and to allow by their acts and omissions
 18 the mistreatment of Plaintiff by Health Services, the Mental Health Division, is a practice that is
 19 both illegal and discriminatory, which, as set forth hereinafter, violates both state and federal
 20 laws, and which will cause Plaintiff irreparable harm, thereby making injunctive relief in favor of
 21 Plaintiff appropriate. Defendants' refusal to provide a non-hostile work environment where
 22 Plaintiff feels free of being emotionally and physically attacked is illegal and will cause Plaintiff
 23 irreparable harm. Plaintiff requests that Defendants CCC and Public Employee's Union Local
 24 One be ordered to provide Plaintiff with a non-hostile work environment.

25 **RESULTS OF DISCRIMINATORY PRACTICES**

26 15. Defendants discriminating practices have caused the following results:

- 27 a. Plaintiff, an African American woman, has been placed in great fear and
 28 apprehension at her place of employment;

- 1 b. Plaintiff has incurred loss of income due to Defendants' refusal to provide a non-
2 hostile work environment;
- 3 c. Plaintiff has incurred emotional stress due to her mistreatment at work and loss of
4 income;
- 5 d. Plaintiff has incurred attorneys' fees herein.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Title VIII of the Federal Civil Rights Act)**

8 16. Plaintiff incorporates by reference and realleges the allegations set forth in
9 Paragraphs 1 through 15 as though fully set forth herein.

10 17. Plaintiff has been denied by Defendants aforementioned acts, the same rights to
11 employment on account of her race, gender, and age as non-African American employees. The
12 Defendants' aforementioned acts violate 42 U.S.C. §1983 which prohibits discrimination on the
13 basis of race, age, and gender.

14 WHEREFORE, Plaintiff prays for relief as more fully set forth hereinbelow..

15 **SECOND CAUSE OF ACTION**

16 **(Violation of the Unruh Civil Rights Act)**

17 **Pendent Jurisdiction**

18 18. Plaintiff incorporates by reference and realleges the allegations set forth in
19 Paragraphs 1 through 17 as though fully set forth herein.

20 19. Plaintiff invokes the courts power pursuant to Rule 18 of the Federal Rules of
21 Civil Procedure to join a claimed violation of the Unruh Civil Rights Act, California Civil Code
22 §§51, 51.2, with the First Cause of Action of this complaint, and to exercise pendent jurisdiction
23 over the state law claims set forth hereinafter. The Unruh Act, which prohibits landlords from
24 discriminating against tenants based upon their disability and/or handicap is merely a separate
25 ground for the same course of action in that it derives from the same nucleus of operative set of
26 facts as the Federal claims. These law claims bear questions of Federal law and policy. It is
27 therefore in the interests of judicial economy as well as fairness to the parties, to litigate the Title
28 VIII and state law claims in a single lawsuit.

20. The implementation by Defendants of the above described employment practices and refusal to provide Plaintiff a non-hostile work environment constitutes a violation of the Unruh Civil Rights Act, and for the reasons stated above, under the Federal Claim, has aggrieved and injured Plaintiff. Unless enjoined, Defendants will continue to utilize the above described discriminatory employment practice and complete their wrongful termination of Plaintiff, and Plaintiff will have no adequate remedy at law.

WHEREFORE, Plaintiff prays for relief as more fully set forth hereinbelow.

THIRD CAUSE OF ACTION

(California Fair Employment and Housing Act)

21. Plaintiff incorporates by reference and realleges the allegations set forth in Paragraphs 1 through 20 as though fully set forth herein

22. California Fair Employment and Housing Act, Government Code, sections 12955 et seq., prohibits discrimination against employees based upon their race, age, and gender. For the reasons set forth hereinabove, Defendants have violated the Fair Employment and Housing Act, and injured Plaintiff.

WHEREFORE, Plaintiff prays for relief as more fully set forth hereinbelow.

FOURTH CAUSE OF ACTION

[Breach of Contract for Employment Against Defendant Contra Costa County]

23. PLAINTIFF incorporates by reference and realleges the allegations set forth in Paragraphs 1 through 10 as though fully set forth herein.

24. PLAINTIFF and CCC entered into an employment Agreement whereby PLAINTIFF agreed to become a CCC employee. Under the terms of this Agreement, CCC agreed to, among other things, compensate PLAINTIFF at a base salary, plus expenses, including health benefits for PLAINTIFF, and retirement benefits, and as a result of Defendant's practice, policies and procedures, agreed not to terminate Plaintiff unless there was good cause to do so.

25. PLAINTIFF performed all conditions, covenants and promises required of her in accordance with the terms and conditions of his Agreement with CCC.

26. CCC, despite the Agreement with PLAINTIFF, and wrongfully constructively

1 terminated PLAINTIFF's employment with CCC.

2 27. As a proximate result of CCC's breach of said Agreement, PLAINTIFF sustained
3 damages, including lost wages and employment benefits in an amount to be proven at trial.

4 WHEREFORE, PLAINTIFF prays for judgment as more fully set forth hereinbelow.

5 **FIFTH CAUSE OF ACTION**

6 **[Breach of Implied Covenant of Good Faith and Fair Dealing**

7 **Against Defendant Contra Costa County]**

8 28. Plaintiff incorporates by reference and realleges the allegations set forth in
9 Paragraphs 1 through 27 as though fully set forth herein.

10 29. The Agreement referred to above, contained an implied covenant of good faith
11 and fair dealing, which obligated CCC and its agents and employees, to perform the terms and
12 conditions of the Agreement fairly and in good faith and to refrain from doing any act that would
13 prevent or impede Plaintiff from performing any or all of the conditions of the Agreement that
14 Plaintiff agreed to perform or any act that would deprive Plaintiff of the benefits of the
15 Agreement.

16 30. Plaintiff performed, or remained ready to perform, all the terms and conditions of
17 the Agreement with CCC.

18 31. CCC, through its agents and managerial employees, was aware that Plaintiff had
19 fulfilled, or remained ready to fulfill, all her duties and conditions under the Agreement contract.

20 32. CCC, through its agents and managerial employees breached the implied
21 covenant of good faith and fair dealing of the Agreement by entering into the Agreement with
22 Plaintiff and then failing and refusing to honor the Agreement, including, but not limited to,
23 failing and refusing to allow Plaintiff to return to her former position, or equivalent position,
24 when Plaintiff was ready to return to his position with CCC, and constructively terminated
25 Plaintiff's employment.

26 33. At the time Plaintiff took a CFRA's approved leave of absence from CCC, she
27 was earning in excess of sixty two thousand dollars (\$62,000.00) per year, plus benefits.

28 34. As a proximate cause of CCC's breach of the implied covenant of good faith and fair

1 dealing, Plaintiff has suffered, and continues to suffer, losses in earning and other employment
 2 benefits, all to his damage in amounts to be established at trial. As a further and proximate cause
 3 of CCC's breach of the implied covenant of good faith and fair dealing, Plaintiff has incurred
 4 reasonable attorney's fees in attempting to secure the benefits owed to Plaintiff under the
 5 Agreement.

6 WHEREFORE, Plaintiff prays for judgment as more fully set forth hereinbelow.

7 **SIXTH CAUSE OF ACTION**

8 **[Violation of California Family Medical Leave Act**

9 **Against Defendant Contra Costa County]**

10 35. Plaintiff incorporates by reference and realleges the allegations set forth in
 11 Paragraphs 1 through 34 as though fully set forth herein.

12 36. As set forth in the paragraphs above, CCC was an employer who at all times
 13 herein was an employer obliged to comply with CFRA, and Plaintiff was an eligible employee
 14 entitled to the protection and privileges created by the CFRA. He has filed a timely
 15 administrative claim with the California Department of Fair Employment and Housing, and been
 16 issued a right to sue letter.

17 37. CCC violated the CFRA when: (1) it failed and refused to possess a safe work
 18 environment to which Plaintiff could return; (2) when it refused and failed to stop the hostile
 19 mistreatment of Plaintiff by her co-worker, which effectively constructively terminated
 20 Plaintiff's employment with CCC.

21 38. As a proximate cause of CCC's conduct, Plaintiff has suffered, and continues to
 22 suffer, losses in earning and other employment benefits, all to his damage in amounts to be
 23 established at trial. As a further and proximate cause of CCC's conduct, Plaintiff has incurred
 24 reasonable attorney's fees to which CCC is required to pay.

25 WHEREFORE, Plaintiff prays for judgment as more fully set forth herein below.

26 **SEVENTH CAUSE OF ACTION**

27 **[Wrongful Termination in Violation of Public Policy]**

28 39. Plaintiff incorporates by reference and realleges the Paragraphs 1 through 38, as

1 though fully set forth herein.

2 40. The State of California has an important and fundamental public policy of
3 protecting the rights and continuing employment of its citizen who as a result of serious physical
4 injury or illness are required to take a leave of absence from work, and to be able to work for the
5 government in a safe work environment, which is also free of discrimination.. This public policy
6 is set forth in the CFRA and California's laws which prohibit discrimination by employers based
7 on race, and California's Constitution.

8 41. CCC violated this fundamental public policy of the State of California when as set
9 forth hereinbefore, it constructively terminated Plaintiff and refused and failed to provide a safe
10 work environment when Plaintiff was able to return to work, and constructively terminated
11 Plaintiff's employment with CCC.

12 42. The primary and motivating factors for CCC in terminating Plaintiff from her
13 employment were the fact that Defendant CCC failed and refused to accept the version of events
14 that Plaintiff, an African-American woman, told her superiors occurred.

15 43. CCC's actions in constructively terminating Plaintiff from her employment were
16 wrongful and malicious in nature and was in direct violation of a fundamental policy of the State
17 of California, and therefore Plaintiff has been wrongfully terminated and is entitled to damages
18 therefor.

19 44. As a direct and proximate result of CCC's actions as alleged herein, and, in
20 particular, CCC's termination of Plaintiff in violation of the Public Policy of California, Plaintiff
21 has been injured and damaged as follows:

22 a) Loss of past and future wages, earnings, benefits and other forms of
23 benefits, compensation and value that he would not have been lost if he had remained employed
24 by the Defendant;

25 b) Extreme and severe emotional distress, suffering, humiliation, anxiety,
26 worry, embarrassment, and interruption of family life, reputation, defamation of character;

27 ///

28 ///

1 c) Plaintiff has or will incur medical or health related expenses pertaining to
2 psychological counseling, other medical or health care support for the stress, suffering
3 embarrassment, discomfort, anxiety and humiliation that he suffered.

4 45. Plaintiff has been further damaged as a result of his wrongful termination in that
5 she has and will incur costs and expenses of this litigation.

6 46. Plaintiff is entitled to prejudgment interest on any and all damages.

7 47. Defendants committed the acts alleged herein recklessly, wantonly, willfully,
8 maliciously, fraudulently, oppressively and despicably with the wrongful intention of injuring
9 Plaintiff and with an improper and evil motive. Plaintiff is thus entitled to recover exemplary
10 and punitive damages from the Defendants in an amount according to proof.

11 48. As a result of the Defendants' actions herein, the Plaintiff was required to and did
12 retain the services of an attorney. The Plaintiff is entitled to recover reasonable and necessary
13 attorney's fees.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff TERRIE LYNN KENT prays for judgment against Defendants,
16 and each of them, as follows:

17 1. For damages for breach of contract according to proof, including lost earnings and
18 other employment benefits, past and future;

19 2. For compensatory damages according to proof, including lost earnings and other
20 employment benefits, costs for seeking other employment, and damages for emotional distress,
21 humiliation and mental anguish;

22 3. For interest on lost earnings and benefits at the prevailing legal rate;

23 4. For punitive damages against Defendants;

24 Health Services Department, Mental Health Division, Public Employee's Union
25 Local One, Deborah Tyler

26 5. For restitution of all lost benefits and money;

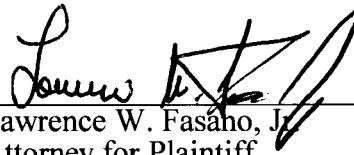
27 6. For reasonable attorney's fees incurred by Plaintiff;

28 7. For costs of suit incurred by Plaintiff; and

8. For such other and further relief as this Court may deem just and proper.

Dated: March 21, 2008

FASANO LAW OFFICE


Lawrence W. Fasano, Jr.
Attorney for Plaintiff
TERRIE KENT

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